

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-626V

Filed: June 1, 2018

UNPUBLISHED

MARY HAVENER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Braden Andrew Blumenstiel, Blumenstiel Falvo, LLC, Dublin, OH, for petitioner.

Voris Edward Johnson, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On May 9, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) following a tetanus, diphtheria, acellular pertussis (“Tdap”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 4, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On May 31, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$80,287.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$80,287.00 in the form of a check payable to petitioner, Mary Havener.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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) Chief Special Master Dorsey
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RESPONDENT'S PROFFER ON AWARD OF DAMAGES

On December 19, 2017, respondent, the Secretary of Health and Human Services, filed his Rule 4(c) Report conceding entitlement to compensation in this matter, and on January 4, 2018, the Court entered its Ruling on Entitlement, finding petitioner Mary Havener entitled to Vaccine Act compensation. Respondent now proffers that petitioner receive a compensation award consisting of:

- a. A lump sum of **\$80,287.00** in the form of a check payable to petitioner, Mary Havener,¹ which amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner is entitled;² and,
- b. A lump sum of **\$5,432.57**, in the form of a check payable jointly to petitioner and her counsel, which amount represents compensation for petitioner's attorneys' fees and costs under 42 U.S.C. § 300aa-15(e).

¹ Petitioner is a competent adult. No guardianship is required.

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

Petitioner agrees with the proffered award of \$80,287.00 for her compensation, and \$5,432.57 for her attorneys' fees and costs, and has further represented in compliance with General Order No. 9 that she has incurred no personal litigation costs.

Respectfully submitted,

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Dated: May 31, 2018